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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,922	08/26/2003	Daniel J. Gitre	GDJ-100-A	6106
21828	7590	08/11/2004	EXAMINER	
CARRIER BLACKMAN AND ASSOCIATES			LEGESSE, NINI F	
24101 NOVI ROAD			ART UNIT	
SUITE 100			PAPER NUMBER	
NOVI, MI 48375			3711	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/649,922

Applicant(s)

GITRE, DANIEL J.

Examiner

Nini F. Legesse

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) 6-11, 13 and 17 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12, 14 and 16 is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 2 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/28/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's election with traverse of invention I (drawn to claims 1-5, 12-1, 16-17, and new claims 18-20) in the reply filed on 6/25/04 is acknowledged. The traversal is on the ground(s) that the claims are all drawn to a single inventive concept. This is not found persuasive because all the species are patentably distinct and Applicant has not shown that they are not.

The requirement is still deemed proper and is therefore made FINAL.

Please note that claims 13 and 17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species III, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 6/25/04.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Rudy (US Patent No. 4,964,827).

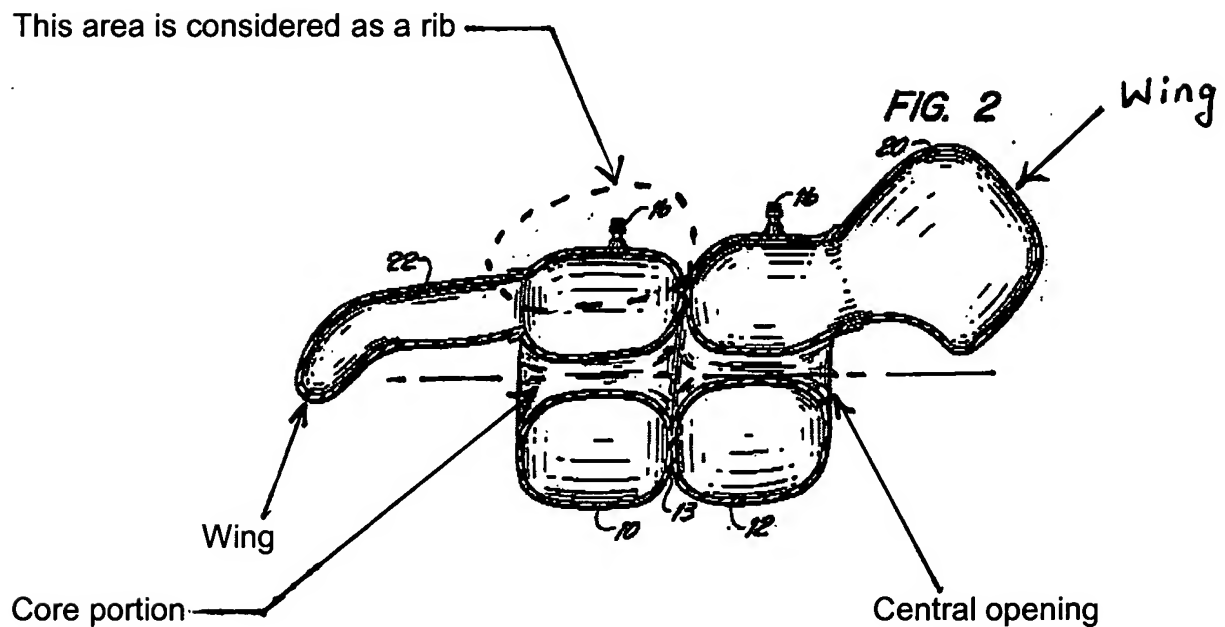
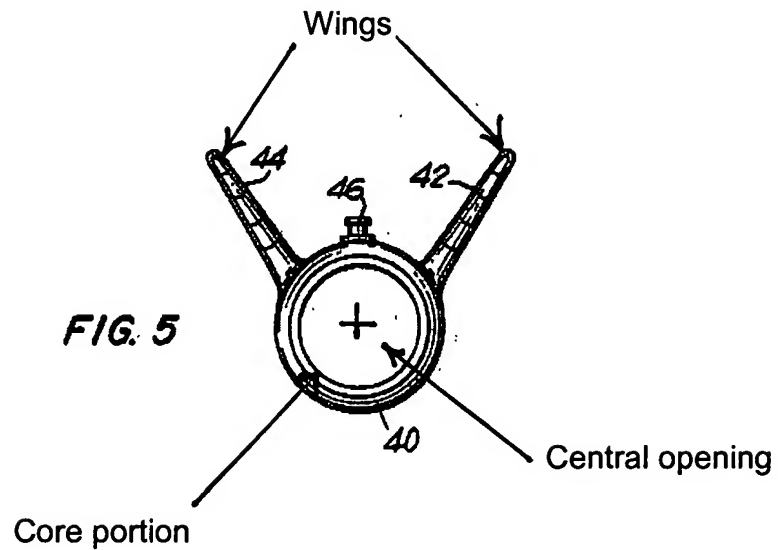
Rudy discloses a device comprising:

- **With respect to claim 1**, Rudy discloses a hollow, inflatable plastic body member (item 40 in one embodiment as shown in Fig. 5 or item items 10 and 12

in another embodiment as shown on Fig. 2) having a central axis and comprising a core portion with a central opening formed therein adapted to receive a shaft of the sports implement (the devices in the above embodiments are capable of receiving a shaft of a sports implement), said central opening extending through said body member along its central opening extending through said body member along its central axis, and a plurality of wing sections (items 42 and 44 for the embodiment as shown on Fig. 2 and items 20 and 22 for the other embodiment as shown on Fig. 2) attached to said core portion and extending outwardly therefrom in an inflated configuration of the apparatus (please refer to the labeled Fig. 5 and Fig. 2 embodiments provided below to clarify the broad interpretation of the claim by the Examiner). With respect to the intended use of the device, that it is to be used in conjunction with a sports implement (see lines 1-2 of claim 1), it should be noted that with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. And Rudy's device is capable of accommodating a sports implement for example, a baseball bat or a golf club shaft through the central opening of the device.

- **With respect to claim 4**, Rudy discloses wherein the body member further comprises ribs positioned thereon between adjacent wing sections (please refer to the Fig. 2 embodiment as shown below).

- **With respect to claim 18**, please refer to the rejections provided above for claims 1 and 4.



Claims 1, 3, 5 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by J. H. Aninger (US Patent No. 3,398,501).

With respect to claim 1, Aninger discloses a hollow, inflatable plastic body member (item 10 as shown on Fig. 1) having a central axis and comprising a core portion with a central opening formed therein (this is the axis of hole 20) adapted to receive a shaft of the sports implement (the device is capable of receiving a shaft of a sports implement), said central opening extending through said body member along its central axis, and a plurality of wing sections (the extremities 14A, 14B, 14C, and 14D are considered as wings) attached to said core portion and extending outwardly therefrom in an inflated configuration of the apparatus (see Fig. 1). With respect to the intended use of the device, that it is to be used in conjunction with a sports implement (see lines 1-2 of claim 1 of the instant invention), it should be noted that with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. And Aninger's device is capable of accommodating a sports implement for example, a baseball bat or a golf club shaft through the central opening of the device.

With respect to claims 5 and 19, holes 24 with seams 26 as shown Fig. 1 are considered as a loop that are capable of use in connecting the apparatus to an accessory (see Fig 1).

With respect to claim 3, the body member (10) is substantially X-shaped in cross section, and the wings (14A, 14B, 14C, and 14D) are spaced substantially 90 degrees apart.

Allowable Subject Matter

Claims 2 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 12, 14, and 16 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nini F. Legesse whose telephone number is (703) 605-1233. The examiner can normally be reached on 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vidovich Greg can be reached on (703) 308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3711

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nini F. Legesse

07/28/04